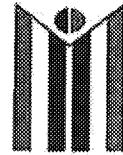


## OFFICE MEMO - Wind River Inter-Tribal Council

Office of the WRIC Secretary



**TO:** WR Energy Steering Committee  
**DATE:** October 7, 2022  
**FROM:** Carolyn Shoyo, WRIC Executive Secretary *CS*  
**SUBJECT:** 10/7/22 SP WRITC Action item

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On October 7, 2022 WRITC in special session with the WRTIC Energy Steering Committee, the WRITC approved a motion to pass the attached "The Wind River Indian Reservation Oil Field Transition Ordinance".

*This was approved by a vote of 5 ESBC yes votes and 5 NABC yes votes, motions carried.*

If you have any questions you may contact me at 307-332-6625 extension 2028.

Attachment

cc: EST Attorneys  
NABC Attorneys  
File

**THE WIND RIVER INDIAN RESERVATION OIL FIELD  
TRANSITION ORDINANCE  
CHAPTER 1: GENERAL PROVISIONS**

- I. **Findings.** The Wind River Intertribal Council ("WRITC") of the Wind River Indian Reservation ("Reservation") finds that:
- (a) Energy production is a key source of economic development on the Reservation, and it generates revenues that are critical to provide essential governmental services for members of the Northern Arapaho Tribe ("NAT") and the Eastern Shoshone Tribe ("EST") (collectively "the Tribes");
  - (b) It is in the best interest of the Tribes and their members to exercise greater sovereign authority over oil and gas production on the Reservation, including, but not limited to, by electing not to renew expiring or expired leases to third parties for operation of oil and gas fields on the Reservation, and instead to self-manage and develop the Tribes' energy resources and retain contract operators as necessary;
  - (c) The leases regarding oil and gas production on the Reservation generally do not comprehensively address all issues related to the process by which field operations will transition from a third-party leaseholder to tribal control and management;
  - (d) Each of these leases expressly states that: "This lease shall be governed by the laws of the Shoshone and Northern Arapaho Tribes of the Wind River Reservation, and the laws of the United States, now in effect, or amended or enacted hereafter, as applicable. Lessee agrees to abide by and conform to any and all applicable federal and tribal laws and regulations now or hereafter in force relative to this lease, including but not limited to the conservation, production, or marketing of Oil and Gas. No laws or regulations which become effective after the date of approval of this lease shall operate to effect the duration of this lease, rate of royalty, rental, or acreage unless agreed to in writing by all parties to this lease." Accordingly, as tribal law, this Ordinance shall apply to all leases regarding oil and gas production on the Reservation;
  - (e) To ensure the health, welfare, and safety of the Reservation's residents, as well as the Reservation's environment, it is imperative that, during the transition of an oil field to tribal control after a lease expires, any and all documents and information in the possession of the third party lessee regarding the oil field (including, but not limited to, equipment inventories, production records, well files, governmental permits, materials related to

the maintenance or replacement of any and all equipment, reports regarding well integrity issues, and any documents regarding the condition and valuation of any and all equipment) be made available to the Tribes and the Wind River Energy Commission (as defined below), as a regulatory body of the Tribes; and

- (f) It is essential that the Tribes adopt this Ordinance as binding tribal law to set forth the procedural requirements for transitioning an oil field from a leaseholder or former leaseholder to full tribal control and management, to set expectations for all parties, to protect the health and safety of all residents of the Reservation, to preserve the value of the Reservation's oil and gas resources, and to safeguard the Reservation's environment for future generations.

II. **Authority and Citation.** This Ordinance is enacted pursuant to the inherent authority of the Tribes to govern and provide for the health, safety, welfare, and economic security of their people and others within the Tribes' jurisdiction. This ordinance shall be known as the *Wind River Indian Reservation Oil Field Transition Ordinance* (hereinafter the "Ordinance").

III. **Purpose.** The Tribes enact this Ordinance to set forth procedural requirements for transitioning an oil field from a leaseholder or former leaseholder to tribal control and management, to protect the health, safety, welfare, and economic security of all residents of the Reservation, and to protect the Reservation's environment.

IV. **Definitions.**

- (a) The "Commission" means the Wind River Energy Commission, an agency of the Tribes created to perform day-to-day regulatory oversight of Oil and Gas production on the Reservation.
- (b) "Court" means the Wind River Tribal Court.
- (c) "Election Period" means ninety (90) days after the expiration or termination of a Lease, unless the Lessor and Lessee agree in writing to an extension.
- (d) "Equipment" means any building, structure, material, tool, piece of machinery, appliance, or any other tangible equipment with a salvage value that was placed in or upon the Leased Premises by the Lessee. Equipment shall not include underground pipelines or Intangible Costs which shall be considered part of the Leased Premises.

- (e) "Equipment Removal" means the process by which the Lessee removes Equipment or any other item from the oil field, including any underground equipment.
- (f) "Fair Market Value" means the price that a seller is willing to accept, and a buyer is willing to pay, on the open market and in an arm's-length transaction, the point at which supply and demand intersect.
- (g) "Gas" means any fluid and associated liquid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir, and which has neither independent shape or volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarified state under standard temperature and pressure conditions.
- (h) "Intangible Costs" mean any costs associated with labor, wellbore drilling, development, and any other costs to establish, operate, and/or maintain wells, equipment, and/or facilities.
- (i) "Lease" means any lease for Oil and Gas production on the Reservation where the lessors are the Northern Arapaho Tribe and Eastern Shoshone Tribe irrespective of when it took effect.
- (j) "Leased Premises" means the tracts of land on the Reservation where the Lessee has leasing rights to engage in Oil and Gas production. Leased Premises include, but are not limited to underground pipelines, roads, tanks, power stations, telephone lines, and any other structures built on the Reservation to produce, save, maintain, treat, transport, and/or own Oil and Gas.
- (k) "Lessee" means any individual or entity, public or private, that has a Lease on the Reservation.
- (l) "Lessor" means the Northern Arapaho Tribe and Eastern Shoshone Tribe.
- (m) "Oil" means a mixture of hydrocarbons that exist in a liquid phase in natural underground reservoirs and remain liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is oil.
- (n) "Reasonable Price" means a price that is based on Fair Market Value and is estimated using common industry standard appraisal practices, such as the Uniform Standards of Professional Appraisal Practice, and including specific consideration of comparable transactions in the market.

- (o) "Reclamation Activities" mean any actions required under applicable law to close each well or unit, including, but not limited to, plugging or abandoning of wells, reclamation of disturbed surfaces, and/or other actions required to close the Lessee's activities on the Leased Premises and to comply with applicable laws and regulations.
  - (p) "Remediation Liability" means any costs associated with Reclamation Activities.
- V. **Scope.** This Ordinance applies to all Oil and Gas production and all Oil and Gas Equipment on the Reservation.
- VI. **Effective Date.**
- a. This Ordinance shall take effect upon approval by the Tribes, collectively or individually.
  - b. The Ordinance will have retroactive effect.
  - c. If the date of any action required by this ordinance has already passed as of the enactment of this Ordinance, the Party responsible for that action shall have 30 days to bring themselves into compliance with said legal duty.
- VII. **Severability.** If any court determines that a provision of this Ordinance is invalid, void, or unenforceable, the remainder of the Ordinance shall remain in full force and effect without regard to the invalid, void, or unenforceable portion.
- VIII. **Court's Jurisdiction.** The Court shall have and maintain original jurisdiction of any and all civil actions arising from this Ordinance, and may grant any appropriate relief, including injunctive and declaratory relief.
- IX. **Sovereign Immunity.** Nothing in this Ordinance shall be construed as a waiver of the sovereign immunity of either the NAT or EST. The Tribes may consider waiving immunity from suit on a case-by-case basis, provided, however, that any waiver of immunity must never be implied, but rather must be expressed clearly and unequivocally.

## CHAPTER 2: OIL FIELD TRANSITION REQUIREMENTS

- I. **Delivery of Premises.** Once a Lease expires or is terminated, the Lessee shall peacefully, in good faith, and without legal process deliver the possession of

the Leased Premises, in good condition and with all wells in working order, to the Tribes.

- II. **Access.** At all times, including in anticipation of the expiration of a Lease, the Tribes shall have unfettered and unconditional access to the Leased Premises.
- III. **Delivery of Information.** No later than forty-five (45) days prior to the expiration or termination of the Lease, the Lessee shall provide all information in the Lessee's possession regarding the oil field, including, but not limited to, Equipment inventories, production records, well files, governmental permits, all documents related to any maintenance and/or replacement of any and all Equipment, and any reports regarding any and all well integrity issues, to the Tribes and the Commission through their legal counsel.

IV. **Right to Purchase Equipment.**

- a. Once a Lease expires or is terminated, the Tribes may, in their sole discretion, purchase any or all Equipment placed in or upon the Leased Premises by advising Lessee that they may purchase such Equipment in writing within the Election Period.
- b. The Tribes can refuse to purchase any or all Equipment placed in or upon the Leased Premises by the Lessee for any reason and at any time prior to payment being made.
- c. Where a Lease has expired or was terminated prior to the effective date of this Ordinance, the Election Period will run from the effective date of this Ordinance.

V. **The Election Period.**

- (a) Period for Election. The Lessor shall have ninety (90) days after the expiration of the Lease to identify which Equipment the Lessor may purchase from the Lessee.
- (b) Extending the Election Period. The Lessor and Lessee may extend the Election Period, but any extension shall be in writing.
- (c) Equipment Remains in Place.
  - a. During the Election Period and six months prior thereto, the Lessee shall ensure that all Equipment remains in working order and in the same position as it was previously.

- b. The Lessee shall ensure that all Equipment is in working order and shall not shut-in any wells during the year prior to the expiration of the Lease without the express written consent of both Tribes.
  - c. At the expiration of the Lease, the Lessee shall peacefully, in good faith, and without legal process deliver the possession of the Leased Premises and all associated Equipment to the Tribes in full working order, and Lessee shall not take any measures to make any well less than fully operational without the express written consent of the Tribes.
  - d. The Lessee shall not take any other action outside the ordinary course of business with respect to the Equipment without the express written consent of the Tribes.
- (d) The Lessor shall identify, within one hundred and twenty (120) days after the expiration of the Lease, which wells the Lessee should plug and abandon as required by the Lease.
- a. Once the Lessor has designated the wells to be plugged and abandoned, the Lessee, in coordination with the Commission, shall perform all necessary actions to plug and abandon the designated wells and complete applicable surface reclamation activities within one hundred and fifty (150) days.
  - b. If the Lessee fails to carry out the required plugging and abandoning and complete other Reclamation Activities duties in conformity with this Section within the designated period, the Commission, at its sole discretion, may:
    - i. Extend the time period for the Lessee to carry out its plugging and abandoning duties and other Reclamation Activities;
    - ii. Retain a contractor to perform the Lessee's plugging and abandoning duties and other Reclamation Activities, and charge the Lessee for all costs of completing the Lessee's duties plus interests beginning 30 days after Lessee is invoiced; or
    - iii. Identify a reasonable sum that the Lessee must pay in lieu of plugging and abandoning the wells and performing other Reclamation Activities, equivalent to the reasonable costs of performing such duties plus interest beginning 30 days after the Lessee is invoiced.

(e) Enforcement and Liability.

- a. If the Lessee violates Chapter 2, Section V(c) of this Ordinance, the NAT and or EST may bring an action in the Court for injunctive relief, declaratory relief, and/or money damages.
- b. If the Court finds that the Lessee has breached Chapter 2, Section V(c) of this Ordinance and the awarding of damages is appropriate, the calculation of damages shall include:
  - i. All costs associated with returning the wells to fully operational condition;
  - ii. Any lost production value due to the wells being non-operational; and
  - iii. Any other consequential damages established by a preponderance of the evidence.
- c. If the Court finds that the Lessee has willfully breached Chapter 2, Section V(c) of this Ordinance, the Court may, at its sole discretion, also award punitive damages up to and including treble damages as calculated from Chapter 2, Section V(e)b of this Ordinance.

**VI. Equipment.** The Lessor, during the Election Period, shall identify which Equipment it may purchase from the Lessee in writing. If the Lessor and Lessee cannot agree on a price for the Equipment expressly identified in writing by the Lessor, and only that Equipment, shall be appraised by an Appraisal Board. The Lessee must produce to the Lessor, at the expiration of the Lease, any and all documentation potentially relevant to the condition, quantity, and quality of the Equipment.

**VII. Reasonable Price.** The Reasonable Price shall be based on Fair Market Value and estimated using common industry standard appraisal practices, such as the Uniform Standards of Professional Appraisal Practice. The Appraisal Board shall determine the Reasonable Price using information provided by both the Lessor and the Lessee and pursuant to the following requirements:

- (a) Any information that is considered by the Appraisal Board to determine the Reasonable Price shall be available and easily accessible to the Lessor and Lessee for review, inspection, and authentication;



- (b) Any underground Equipment is presumed to be in poor condition unless the Lessee provides specific evidence that proves such Equipment is not in poor condition;
- (c) Market transactions for comparable oil fields shall be used as evidence in determining the Reasonable Price;
- (d) Any Remediation Liability shall be used to offset the Reasonable Price of the Equipment; and
- (e) Intangible Costs shall not be included in the determination of the Reasonable Price.

**VIII. Section 8 – Election Not to Purchase Equipment.**

- (a) For the Equipment Lessor elects not to purchase that is placed in or upon the Leased Premises by the Lessee, the Lessee shall remove such Equipment within ninety (90) days following either the end of the Election Period or written notice of the Lessor's election not to purchase said Equipment, whichever is earlier. If the Lessee does not remove such Equipment within the ninety (90) day removal period, the Lessor may remove the Equipment at the Lessee's sole cost and risk, or may assume ownership of the Equipment at no cost to the Lessor.
- (b) If Lessee elects to remove Equipment pursuant to Chapter 2, Section VIII(a) of this Ordinance, Lessee shall do so without causing any damage or harm to the field, the surrounding environment, any Equipment, or any person. Lessee shall be strictly liable for any:
  - a. Damage to the field or any part thereof;
  - b. Harm to the environment;
  - c. Injury or loss to person or property; and/or
  - d. Death of person.

**IX. Section 9 – Reclamation Activities.**

- a. The Lessee shall perform all required Reclamation Activities on the Leased Premises unless the Lessor waives, in writing, the Lessee's required Reclamation Activities, in whole or in part.

- b. The Lessor must inform the Lessee of the Lessee's duties to perform any required Reclamation Activities within 2 (two) years of the expiration of the Lease, or when the Tribes assume control and operation of the Leased Premises, whichever is later.